

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: John W. Wallace, Assistant General Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion: Amendments to Regulation 18997 -- Audits of Campaign Reports and Statements of Candidates for the Board of Administration of the Public Employees' Retirement System

Date: December 18, 2007

Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of the amendments to Regulation 18997 at the March meeting.

Reason for Proposal: The California Public Employees' Retirement Board (CalPERS) administers the public retirement system for California's state employees, classified school employees, and employees of public agencies that elect to contract with CalPERS. The CalPERS board consists of thirteen members. The CalPERS membership directly elects six of the thirteen. (Section 20090(g).) Before 1999, candidates in CalPERS elections were not subject to the Act's provisions regulating election campaigns. However, in 1998, the Legislature passed Senate Bill 1753 (Stats. 1998, ch. 923) that, among other things, amended the Act to require candidates for the CalPERS board to file campaign statements with the Secretary of State. In addition, SB 1753 required that the Commission develop a method for selecting CalPERS candidates for audits pursuant to Section 90000 similar to that used for other candidates.

In November 2000, the Commission adopted Regulation 18997 to implement SB 1753's amendment to Section 90001.¹ Subdivision (b) of the regulation provides:

“Those candidates who have received contributions of \$1,000 or more in an election year shall be subject to audit. Those candidates who have received contributions less than \$1,000 shall be subject to audit on a random basis with these candidates having a 25-percent chance of being audited. The Commission shall reassess the thresholds contained in this paragraph after completion of the audit of the 2003 election for the Board of Administration of the Public Employees' Retirement System.”

The Commission selected the original \$1,000 threshold after consultation with CalPERS. At that time, Commission staff noted that “there [was] little evidence of the actual amounts raised by

¹ At that time, the Commission also adopted Regulation 18453. Regulation 18453 requires that candidates for CalPERS Board elections maintain records as specified in Regulation 18401. That regulation is not impacted by the current proposed amendments.

candidates” since there was no reporting requirement prior to SB 1753. Consequently, the Commission intended the threshold to be temporary.²

Proposed Amendments: *Audit Threshold:* Based on election statistics gathered since 2000, staff has confirmed that the threshold for mandatory audits is too low.³ For example, in 2006, the three candidates running for the CalPERS board raised \$25,934, \$25,375, and \$1,903. Thus, all were subject to mandatory audits. In order to create a dollar threshold that reflects actual fundraising patterns in the CalPERS elections, staff proposes increasing the threshold to \$5,000.

Additional Audits by Random Selection: In addition, the audit of CalPERS candidates selected by random audit (those who received less than the threshold amount) has also proved unduly burdensome. This secondary selection method results, in many cases, in most of the candidates in a CalPERS election being audited.⁴ For example, in the 2002 election for the public agency member, there were two candidates who raised more than \$1,000, and two candidates that raised less. Three of the four candidates were audited. The third candidate was required to be audited under the random selection process.⁵

The one exception to this apparent over inclusiveness appears to be the at-large elections. At-large elections were held in 2001 (19 candidates) and 2005 (nine candidates) to fill two seats. In 2001, three candidates exceeded the \$1,000 threshold. Sixteen candidates raised less than \$1,000: thirteen raised no contributions, one raised \$10, and two others raised \$600 and \$999. In that election, four of the 16 candidates spending less than \$1,000 were randomly selected for audit. In 2005, two candidates exceeded the \$1,000 threshold. Seven candidates raised less than \$1,000 (six raised no contributions, and one candidate raised \$443). In that election, two of the seven candidates spending less than \$1,000 were randomly selected for audit.

However, more importantly, since the regulation was enacted, none of the randomly selected audits has revealed a violation of the Act resulting in a fine. Thus, the benefits of these randomly selected audits and the limited amounts at stake may be outweighed by the administrative burden of conducting them. Staff proposes the elimination of the random selection audit process.

² The Commission explicitly indicated this by stating in the regulation that “The Commission shall reassess the thresholds contained in this paragraph after completion of the audit of the 2003 election for the Board of Administration of the Public Employees’ Retirement System.”

³ CalPERS hold elections on a three-year rotational basis. The first year is the at-large election, the second year is the election of the public-agency member, state member and the school member, and the third year is the retired member election. The fourth year has no elections. The attached chart shows the elections since the adoption of the regulation.

⁴ In contrast, other groups subject to a random drawing tend to be large. For example, in 2007, all of the following were subject to random drawings: local jurisdictions (20 were selected), general purpose committees (118 were selected), lobbying firms (88 were selected) and lobbyist employers (64 were selected), legislative districts (20 Assembly and 5 Senate districts were selected), superior court offices (9 were selected), and statewide candidates raising less than \$25,000 (7 were selected).

⁵ Note that the Franchise Tax Board and Commission staff may perform discretionary audits based on Section 90003.